In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 345

RICHARD SECOR CORLISS, FRED AUGUST HEISE, AND WALTER HEROLD, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. A, 25-41) is not yet reported. The opinion of the District Court (C84-100[1]) is reported at 173 F. Supp. 677.

JURISDICTION

The judgments of the Court of Appeals were entered on July 22, 1960. The petition for a writ of certiorari was filed on August 19, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1)

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[1] The designation "C" refers to the printed Appendix to petitioner Corliss' brief in the Court of Appeals; "HE" to that of petitioner Heise; and "HR" to that of petitioner Herold.

QUESTIONS PRESENTED

1. Whether there was basis in fact for denial of petitioners' respective claims to classification as conscientious objectors under the Universal Military Training and Service Act.

2. Whether there was procedural unfairness in the denial of petitioner Herold's claim.

3. Whether *Gonzales* v. *United States*, 364 U.S. 59, should be overruled.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Universal Military Training and Service Act, and regulations thereunder, are set forth in the Appendix, *infra*, pp. 21-25.

STATEMENT

Petitioners seek review of their convictions, upon trial without a jury, of violating the Universal Military Training and Service Act by refusing to be inducted for military service. Each petitioner, a Jehovah's Witness, sought, but was denied, classification as a conscientious objector. Sentence of one year and one day was imposed in each case. The Court of Appeals unanimously affirmed the convictions (Pet. App. A, 29-41).

Corliss

Petitioner Corliss was born on February 2, 1934 (C105). In his Classification Questionnaire, dated April 2, 1952, he left blank the space for indicating preparation for the ministry (C106), and stated his occupation as office boy for a textile firm in New York City (C106). In the Special Form for Conscientious

Objector (C108, 111), petitioner referred to an attached statement, to an issue of the Watchtower magazine, and to letters from neighbors attesting petitioner's sincerity (C112-113, 116, 123-124). The form bore an appended statement by petitioner's father that he had assisted petitioner in the preparation thereof "due to his unfamiliarity with the location of scripture necessary to support his statements" (C28).

In the statement, petitioner professed adherence to Jehovah as requiring duties superior to those of human relationship (C119), and stated that his parents had become Jehovah's Witnesses soon after November 1945 and that petitioner had attended meetings with them (C119). Petitioner's father was baptized as a Witness on June 22, 1952 (C119). Petitioner further stated (C120-121): "I have at this point in my life after having spent (1) one year in following my own personal fleshly desires to develop my personal talent for illustrative art, by attending the Cooper Union Art School, come to the conclusion that my time would be better spent obeying the 'admonition' of Jehovah * * * by trying, to the best of my ability, to buy back the time I have wasted in studying for a commercial career when I am well aware that under God's government in the 'new system of things', after 'Armageddon,' there will be no commercial enterprize for personal independent gain. As a result of this conclusion I have enrolled in the Theocratic ministry course on Friday evenings from 7:30 to 8:30 where I will, God willing, learn to orally express the truths I have learned. I will also attend the service meeting on the same night from 8:30 to 9:30 during which we discuss ways and means

of better disseminating these truths. On Tuesday evenings from 8:30 to 9:00 I attend a congregation Bible study open to all. On Sunday mornings from 9:00 to 12:00 I will be learning to apply the knowledge acquired, by accompanying a mature minister in his door to door ministry * * *." The date of enrollment was not stated, but it appears elsewhere as January or February 1954 (C26; cf. C136).

On January 5, 1954, petitioner was classified I-A. He requested and was granted a personal appearance before the Local Board. The summary of that appearance, signed by the members of the Board, recited that petitioner stated that, as a member of the Jehovah's Witnesses, he could not accept a I-A classification, and requested an appeal. The Government Appeal Agent, in his summary, stated that petitioner "is presently studying the scriptures in order to become a full fledged member of the Jehovah's Witnesses" (C109, 125-126).

Petitioner appealed his I-A classification, and had a hearing before a Department of Justice hearing officer. At the hearing, petitioner admitted that he was not yet an ordained minister of his sect but asked for classification as a conscientious objector "because he should devote more time to Jehovah's work of preaching the Gospel." He said that he could not accomplish the same purpose in the armed forces, since the Chaplain Corps is divided into faiths, which is not the real way. When asked what prompted him to claim conscientious objection, petitioner stated that long before, when he was seven or eight years old, he had decided he would not go into the army and he realized that the time had come to do something about it. He said that

when he first conceived this idea he had thought that he would go into some noncombatant branch where he would not be required to bear arms. When questioned further about noncombatant participation, he said that he would not feel right about giving his allegiance even in that capacity as he owed his allegiance to God rather than to a nation. He was then asked whether he thought God would disapprove of his going into the medical or hospital corps, but gave no answer (C134).

An accompanying witness, who spoke on petitioner's behalf, stated that he had known petitioner for four or five years; that petitioner was not active in the Jehovah's Witnesses at first because of his youth; that when he was confronted with the decision to serve, he had to decide whether to bear arms and realized that it was wrong to kill. The witness stated that he felt that petitioner was sincere but confused; that petitioner did not want to kill or take part in worldly conflicts but would try to protect himself; that if he killed with intent to do so it would be held against him (C134-135).

The Hearing Officer found that while petitioner impressed him as being sincere in his devotion to his religious sect and the principles for which it stands, he did not appear to have a genuine, "personal" conviction as to why he should not bear arms or participate in war. Consequently, the Hearing Officer recommended that the petitioner's claim be not sustained (C135).

On June 18, 1956, the Department of Justice recommended to the Appeal Board that petitioner's claim of conscientious objector status not be sustained (C133-

135).[2] A copy of the Department's recommendation was served on petitioner (C127).

On July 16, 1956, petitioner wrote to the Appeal Board, in reply to the recommendation of the Department of Justice. The major portion of his letter consisted of biblical quotation and general theory (C127-131). He stated, of the Jehovah's Witnesses, that "all are conscientious objectors" (C127); that subsequent to the appearance before the hearing officer he had been studying and attending "the various meetings and specificially the Ministry School on Friday evenings, in preparation for becoming an ordained minister" (C128); and that up to this time he had "not yet felt prepared to take this important step" of baptism, but intended to do so (C129).

In reply to the Hearing Officer's finding that although petitioner was sincerely devoted to his religious sect he did not have a personal conviction as to why he should not participate in warfare, petitioner stated that Jehovah's Witnesses do not give their devotion to a religious organization, but to Jehovah God (C129); and that the Hearing Officer could not, within thirty minutes, judge petitioner's inner convictions (C129).

The Appeal Board, by a vote of 5-0, classified petitioner as I-A (C110). Petitioner refused to be inducted (C41-42, 79-80).

Heise

Petitioner Heise was born on November 12, 1932 (HE 52). He filed his Classification Questionnaire on October 24, 1951 (HE 52), at which time he was em-

[2] The date 1958 at C133 is an error.

ployed as mail clerk in a brokerage firm (HE 53). The paragraphs relating to study preparatory for the ministry and to claim of conscientious objection to war were left blank (HE 53-54).

Petitioner was first classified I-A, but was rejected and reclassified IV-F (HE 55). Upon later reclassification as I-A, petitioner submitted a letter from the commercial art department of the New York State University Institute of Applied Arts and Sciences concerning his status as a student there. He was reclassified I-S(C) on April 1, 1953, for the period to February 1, 1954 (HE 55, 58).

On February 4, 1954, petitioner was reclassified I-A (HE 55). He protested this classification in a letter dated February 10, 1954, stating that he was still at the school and required "at least another year in order to finish" (HE 59).

At the personal appearance before the Local Board on February 18, 1954, petitioner for the first time claimed conscientious objection to military service (HE 60). On March 1, 1954, he submitted a letter of one Anderson stating that on September 1, 1953, petitioner had begun attending home Bible study conducted by Anderson in the Jehovah's Witnesses doctrine (HE 61). On March 3, 1954, petitioner filed a letter requesting re-opening of his classification "because of new evidence that would affect my status. This new evidence could not be submitted earlier because my beliefs and convictions were different. Through Bible studies and association with Jehovah's witnesses I now have conscientious and sincere objections to participating in combatant and non-combatant military service.

Through studying and associating with Jehovah's witnesses I am now in a position to inform you of my stand." (HE 62).

The letter continued with various biblical references, and reported petitioner's attendance at an assembly of Jehovah's Witnesses at the Yankee Stadium the preceding July. A copy of the Watchtower magazine issue of February 1, 1951, on pacifism and conscientious objection was enclosed (HE 62-65).

On March 4, 1954, petitioner filed the Special Form for Conscientious Objector in which he stated, *inter alia*, that listening to radio station WBBR "for over a year and associating with Jehovah's Witnesses" had brought "a better understanding of God and his purposes" (HE 66); that he believed in the use of force "in individual matters of protecting ourselves and our property from being destroyed or confiscated," but battles of the nations "are political and for selfish aggression" (HE 67); that he had not publicly expressed his views on conscientious objection (HE 67); that his parents were Lutherans (HE 69); and that his own membership as a Jehovah's Witness began in August 1953 with Bible studies (HE 69).

A letter of three Jehovah's Witnesses stated that petitioner had been attending "an Area Study" and congregational meetings of the Jehovah's Witnesses since August 1953, that he had been "actively expressing his status as one of Jehovah's Witnesses" since November 1953, and that he "intends to be immersed, thus formally dedicating his life to the ministerial work" (HE 72).

Petitioner made another personal appearance be-

fore the Local Board on March 25, 1954. The board summarized petitioner's claim as follows: "Became interested in the teachings of the Jehovah's Witness in August 1953. Was baptized as a member of the above religious group on Mar. 13, 1954. The parents of the registrant are Lutherans. Registrant was brought up as a Lutheran. Attended the Salem Lutheran Church, 4th Ave & 67-St Brooklyn off and on, on the average about twice a month. Has not attended services in the Lutheran Church since becoming interested in the Jehovah's Witness group." (HE 74).

On April 22, 1954, petitioner was classified I-A (HE 56). In a form furnished by the local board for the information of the Appeal Board, and filed by petitioner on April 13, 1954, petitioner stated, *inter alia*, that he had no secular employment, being a student and working part time (HE 76-77); that, except for the past month, he had averaged 6 to 8 hours per month in house-to-house preaching (HE 77); that (in response to a question as to his title) "None of Jehovah's witnesses have titles", (HE 77); that in the past month his attendance at meetings and study of the Bible and Watchtower publications had consumed approximately ten hours (HE 77); that he believed in the use of force "in defense of myself, my family, my home, my religion, and my brothers" (HE 77); and that his conscientious objection was based "primarily" upon his desire to preach "and upon my unwillingness to use force in conflicts between the nations" (HE 77-78).

Following petitioner's appearance before a Hearing Officer of the Department of Justice on April 5, 1955 (HE 81), the Hearing Officer, and then the Depart-

ment, recommended against petitioner's claim. The Department reported that petitioner testified that he had attended Lutheran services until about April 1953 (HE 80); that in 1952 one of his brothers discussed with him a book on the teachings of Jehovah's Witnesses, at which time he discussed certain aspects of it with his family and began listening to the WBBR broadcasts in August 1952. (HE 81); and that he enrolled in the ministry school in June 1954 (HE 81). The instructors in the college which the petitioner attended were unaware of his claimed belief as a conscientious objector except that they were told by petitioner in November 1953 that he was leaving school to commence studies for the ministry; however, he changed his mind one day later in favor of completing his course (HE 82). Petitioner was unable to point out any passage of the Bible to sustain his beliefs and constantly referred to several pages of typewritten notes which he brought with him and which were apparently a copy of a letter sent to the Local Board under date of February 27, 1954 (HE 82).[3]

The Hearing Officer concluded that petitioner's claim was not made in good faith, observing, *inter alia*, that the conscientious objection was not asserted until February 1954, when petitioner's deferment as a student had expired (HE 83).

The Appeal Board, by a 5-0 vote, classified petitioner as I-A (HE 51), and petitioner refused to be inducted (HE 44, 57-58).

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[3] At the trial, the Hearing Officer (called as a witness by petitioner) testified that petitioner "rambled on from his notes, from one portion of his notes to another, without in any way connecting them up" (HE 24).

Herold

Petitioner Herold was born on August 22, 1934 (HR 41). In March 1952, he attempted to enlist in the Naval Reserve but was rejected on physical grounds (HR 69). In his Classification Questionnaire, filed on October 7, 1952 (HR 41), he stated that he was not a minister of religion (HR 42), and that he was then employed as a messenger at a manufacturing corporation (HR 42-43). He did not claim conscientious objection in the paragraph provided for that claim (HR 44).

On October 7, 1952, petitioner was classified I-A, but no preinduction notice was sent to him until May 3, 1954 (HR 45). He gave his religious denomination to an employer as Lutheran in 1952 (HR 71). In August 1953, petitioner applied for enrollment in a military college, which enrollment would have required two years of military service after graduation. The application was lost or mislaid (HR 68-69).

Approximately one month after receipt of the preinduction notice, i.e., on June 1, 1954, petitioner wrote to the Local Board that "due to a change in religious beliefs" he desired a conscientious-objector form (HR 66). On June 8, 1954, he filed the form (HR 46), stating that he had been taking the Jehovah's Witnesses' "course of study" for the past three months, but that he had never given public expression to his views on conscientious objection (HR 48). He reported his parents' religion as Lutheran and the date of his own membership in the Jehovah's Witnesses as 1954 (HR 50).

At his personal appearance before the Local Board

on June 29, 1954, petitioner, in reply to questions of board members, stated that his religion had been Lutheran until March 1954 (HR 53) but that he had not been active (HR 56); that he did not believe in saluting the flag (HR 58); and that he would defend only himself and his father and mother against attack (HR 59).

After classification as I-A, and appeal (HR 45), petitioner appeared before a Hearing Officer of the Department of Justice. On April 5, 1955, the Department recommended against classification as a conscientious objector. The Department reported that in his appearance before the Hearing Officer, petitioner "read various passages of the Bible from a written memorandum which he had brought with him. When the Hearing Officer questioned [petitioner] as to the doctrine of 'theocratic warfare' taught by the Jehovah's Witnesses, [petitioner's] answers were very vague, and on further questioning as to various passages in the Bible, his knowledge thereof seemed most limited, and he relied to a great extent on the mere reading of his written notes which he had prepared for the hearing" (HR 67). It was also noted (HR 68) that petitioner was accompanied by a Miss Gunn with whom he was "keeping company" and that she "attempted to prompt [petitioner] in his answers with reference to the questions concerning the Bible, and after [petitioner's] testimony was completed, Miss Gunn was anxious to amplify the answers of the [petitioner] from an apparent realization that the [petitioner's] answers had been unsatisfactory."

The Hearing Officer concluded that petitioner's claim was not made in good faith. He noted that the claim was first made just one month after receipt of the preinduction notice; that petitioner had a Lutheran background; that he had attempted to enroll in the Naval Reserve, and then in a military college, two years and one year before, respectively; and that he was unfamiliar with the biblical doctrines upon which he purported to base his conscientious objection (HR 69).

On July 28, 1955, one Arthur Waugh wrote to the appeal board on behalf of petitioner (HR 72-75). Waugh emphasized petitioner's sincerity (HR 74). He stated that petitioner, in October 1952, had been "engaged in Witness activities" for only a short time ("about 1951 or 1952") and had not then known of his right to deferment as a conscientious objector (HR 73); that it was at Waugh's suggestion that petitioner had attempted to enter the Navy in a noncombatant role (HR 73); that petitioner's brother, also a Jehovah's Witness, "is still serving" in the Navy as a mess steward (HR 73); that Miss Gunn was not engaged to petitioner and was not a Jehovah's Witness (HR 73); and that petitioner withdrew from the attempted enrollment in the military college "feeling it was wrong to accept college education when he might subsequently have to refuse active service" (HR 74). Waugh stated that petitioner did not know of his letter (HR 74).

The Appeal Board, on August 25, 1955, reciting that it had reviewed the entire file and all "documents con-

tained in the Cover Sheet," classified petitioner I-A by a 4-0 vote (HR 46, 80). Petitioner refused to be inducted (HR 18, 36).

ARGUMENT

1. Petitioners' principal contention (Pet. 20-23)—that there was no "basis in fact" (*Estep* v. *United States*, 327 U.S. 114, 122) for the denial of their conscientious objector claims—raises only factual questions that both the trial court and the court of appeals resolved against them. Petitioners do not contend that the Court of Appeals applied an erroneous standard of judicial review. Rather, they seek to have this Court re-evaluate the evidence upon which the selective service local boards and the hearing officers, before whom petitioners appeared, unanimously found that petitioners were insincere in their claims.

In determining "the sincerity of [an] individual's belief * * * [e]ach case must stand or fall on its own facts" (*United States* v. *Simmons*, 213 F. 2d 901, 905 (C.A. 7), reversed on other grounds, 348 U.S. 397), and "[i]n conscientious objector cases * * * any fact which casts doubt on the veracity of the registrant is relevant" (*Witmer* v. *United States*, 348 U.S. 375, 381-382). We submit that the Court of Appeals correctly concluded, on the basis of a careful and detailed review of the evidence, that under the narrow scope of judicial review of selective service classifications, there was sufficient "basis in fact" to sustain the denial of each petitioner's conscientious objector claim. In any event, there is no occasion for still another review of these factual questions by this Court.

As to petitioners Heise and Herold, there was, as the

court below noted, ample basis for rejection of their claims. The fact that their conversion to the Jehovah's Witnesses sect did not take place until their induction was imminent was a significant factor that cast doubt upon the sincerity of their claims. Other significant factors were that they both had been reared as Lutherans and that each had great difficulty in explaining his beliefs as a Witness. These facts, together with others discussed by the Court of Appeals, fully support the conclusions of the boards and hearing officers, who saw these petitioners, that neither of them held the personal conviction against participation in war which the statute requires in order to obtain exemption as a conscientious objector.

The evidence as to petitioner Corliss, while somewhat weaker, was also sufficient to establish a basis in fact for the denial of his claim. The best evidence of a registrant's sincerity, as observed by the Court of Appeals (Pet. App. A, 34-35), is

> not the man's statements or those of other witnesses, but his credibility and demeanor in a personal appearance before the fact-finding agency * * *—a rule long recognized in cases of other sorts [citing authorities]. Neither do we see any logical basis for limiting this rule of according weight to the observations of the registrant by the Local Board and the hearing officer to cases where there are issues of veracity as to some subsidiary fact * * *. To do so would make mere parroting suffice, at least if it antedated the draft call long enough and if it was not accompanied by inconsistent conduct or demonstrable prevarication as to sub-

> sidiary facts. On the other hand, to sustain the denial of a claim on a mere *ipse dixit* of lack of sincerity from the Local Board or the hearing officer would create serious possibilities of abuse. * * * The Court in effect must determine, as best it can, whether the Local Board or the hearing officer and, ultimately, the Appeal Board were rational and sincere in disbelieving the sincerity of registrant's belief * * *.

Here there were objective facts which support the conclusion that Corliss did not have a personal conviction against participation in war in any form. Although he claimed that he had already entertained objection to war at the age of 7 or 8, his father's conversion to the Jehovah's Witnesses sect did not commence until at least four years later. Petitioner's own activity in the sect did not commence until much later; he did not enroll in the Theocratic school until about the time he received the definitive inquiry from the selective service board in November 1953 (C 108; see *supra*, pp. 3-5). Although, as observed by the Court of Appeals, the childhood aversion to war might later have become fused in a religion-based objection, the Appeal Board could properly conclude that no such fusion occurred here.

The trial judge, reviewing Corliss' manner of reply to the Hearing Officer's questions, pointed out that Corliss set forth the position taken by the Jehovah's Witnesses sect but "the question is not, to repeat the point made at the outset, what religious sect or organization defendant belongs to, nor what the teachings of that sect are. The inquiry is directed to the sincere

belief of defendant and the extent of his conscientious objection to military service" (C 90-91). The Court of Appeals similarly noted that petitioner's "answers seemed more learned than personal"; that the Hearing Officer might have drawn the inference that not only the biblical references were the father's (as admitted by petitioner) but the thoughts as well; that the letters of friends and the attachment of a periodical would not perform the office of a personal avowal; and that the belatedness of petitioner's alleged personal belief, first appearing fully in petitioner's reply to the Appeal Board, could rationally be deemed by that board "to reflect adversely on [petitioner's] sincerity" (Pet. App. A, 36-37).

The foregoing discussion also refutes this petitioner's contention (Pet. 2, 22-23) that his conscientious-objector claim was denied solely because he stated that he was seeking such classification in order to enable him to continue to serve the Witnesses. The denial did not rest on any single element, but on the composite impact of all. Of course, petitioner's stated reason for seeking a conscientious-objector classification was one factor which could properly be considered in determining whether petitioner's claim was based upon sincere religious objection to war.

2. There is no merit to petitioner Herold's contention (Pet. 23) that the transcript of his appearance before the Local Board shows that the Board was prejudiced, and that such prejudice also must have affected the Appeal Board. In the first place, a reading of that transcript (HR 53-63) shows, we believe, not prejudice but at most annoyance and impatience

at petitioner's argumentative answers to the Board's questions (E.g., HR 54, 59). Secondly, as the court below pointed out (Pet. App. A, 39):

> * * * In any event, we are here reviewing the action of the Appeal Board, which had the record of the Local Board before it, and was as able to detect prejudice on the part of the Local Board as we are. It is settled that where there is no evidence that the Appeal Board has been misled, unfair conduct by members of the Local Board will not upset a classification. *Cramer* v. *France*, 148 F. 2d 801, 804-805 (9th Cir. 1945); *Davis* v. *United States*, 203 F. 2d 853 (8th Cir.), cert. denied 345 U.S. 996 (1953); *Reed* v. *United States*, 205 F. 2d 216 (9th Cir. 1953), cert. denied 346 U.S. 908 (1953); *Falbo* v. *United States*, concurring opinion of Mr. Justice Rutledge, 320 U.S. 549, 555 (1944). Cases where the Local Board had applied an erroneous test and it is impossible to tell whether the Appeal Board relied upon this, e.g., *United States* v. *Stepler*, 258 F. 2d 310, 316 (3rd Cir. 1958), *Niznik* v. *United States*, 184 F. 2d 972 (6th Cir. 1950), and *Mintz* v. *Howlett*, 207 F. 2d 758 (2d Cir. 1953), are distinguishable. See *United States* v. *Chodorski*, 240 F. 2d 590, 592-93 (7th Cir. 1956), cert. denied 353 U.S. 950 (1957).[4]

[4] Herold suggests (Pet. 3, 17-18), but does not argue, that he was prejudiced by the letter that Mr. Waugh submitted to the Appeal Board after the Department of Justice had made its recommendation (*supra*, p. 13). But the pertinent regulations (32 C.F.R. 1626.24(b), *infra*, p. 24) do not permit the Appeal Board to consider such a letter; the Board's statement that it had considered all "documents contained in the Cover Sheet" (HR 80) (in which Waugh's letter was placed) does not justify petitioner's assumption

3. Finally, petitioners contend (Pet. 24) that at the trial they were entitled to see F.B.I. reports to determine whether the résumés thereof, furnished to them in accordance with *United States* v. *Nugent*, 346 U.S. 1, 5-6, 9, were accurate. As petitioners recognize, however, this question was resolved against them last Term in *Gonzales* v. *United States*, 364 U.S. 59. While petitioners urge that *Gonzales* should be reconsidered and overruled, they present no new grounds therefor, but rely on petitioner's brief in that case. We submit that nothing that occurred since that decision, less than four months ago, calls for rehearing or reconsideration.

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that the Board relied on material that it may not consider. Moreover, as the Court of Appeals noted (Pet. App. A, 40), the "general tenor of the letter was highly favorable" to petitioner; the single alleged instance of inconsistency between the letter and Herold's own statements was not inconsistent; and "if the Appeal Board considered Waugh's letter at all, its effect would have been helpful to Herold rather than the reverse." In these circumstances, the court correctly held (*ibid.*) that "Herold has not made a showing of prejudice from the inclusion of Waugh's letter in his file sufficient to warrant reversal."

CONCLUSION

The decision below is a correct application of established principles to the three particular factual situations here presented. No conflict of decisions is involved. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1960.

APPENDIX

Statute and Regulations Involved

1. The pertinent portions of the Universal Military Training and Service Act, 62 Stat. 604, 612, 619, 622, 63 Stat. 1073, 1074, 65 Stat. 75, 86, provide:

Section 6(j) [50 U.S.C. App. 456(j)]:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * * Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2)

if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *

Section 10(b)(3) [50 U.S.C. App. 460(b)(3)]:

* * * [L]ocal boards * * * shall, under rules and regulations prescribed by the President, have the power within the respective jurisdictions of such local boards to hear and determine, subject to the right of appeal to the appeal boards herein authorized, all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this title, of all individuals within the jurisdiction of such local boards. The decisions of such local board shall be final, except where an appeal is authorized and is taken * * *. The decision of * * * appeal boards shall be final in cases before them on appeal unless modified or changed by the President. * * *

Section 12(a) [50 U.S.C. App. 462 (a)]:

Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in

any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

2. The pertinent regulations provide:

32 C.F.R. (1954 rev.) 1623.1(b):

The registrant's classification shall be determined solely on the basis of the official forms of the Selective Service System and such other written information as may be contained in his file * * *. Since it is imperative that appeal agencies have available to them all information on which the local board determined the registrant's classification, oral information shall not be considered unless it is summarized in writing and the summary placed in the registrant's file. * * *

32 C.F.R. (1954 rev.) 1625.1(b):

Each classified registrant * * * shall, within 10 days after it occurs, report to the local board in writing any fact that might result in the registrant being placed in a different classification * * *.

32 C.F.R. (1954 rev.) 1626.12:

The person appealing may attach to his appeal a statement specifying the matters in which he believes the local board erred, may direct attention to any information in the registrant's file which he believes the local board has failed to con-

sider or to give sufficient weight, and may set out in full any information which was offered to the local board and which the local board failed or refused to include in the registrant's file.

32 C.F.R. (1959 Supp.) 1626.24(b):

(b) In reviewing the appeal and classifying the registrant, the appeal board shall not receive or consider any information other than the following:

(1) Information contained in the record received from the local board.

(2) General information concerning economic, industrial, and social conditions.

(3) Any advisory recommendation from the Department of Justice under § 1626.25.

(4) Any reply to the recommendation of the Department of Justice received from the registrant under § 1626.25.

32 C.F.R. (1954 rev.) 1626.25(a)(2):

* * * If * * * the local board has classified the registrant in any class other than Class I-O, the appeal board shall transmit the entire file * * * for the purpose of securing an advisory recommendation from the Department of Justice.

32 C.F.R. (1954 rev.) 1626.25(b):

Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraph (a) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard.

* * * If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

32 C.F.R. (1954 rev.) 1626.25(e):

Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the letter containing the recommendation of the Department of Justice.

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